

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

SYDNEY NICOLE LLC  
AND SYDNEY NICOLE  
GIFFORD,

*Plaintiffs,*

V.

ALYSSA SHEIL LLC AND  
ALYSSA SHEIL,

*Defendants.*

Case No.: 1:24-cv-00423-RP

## Jury Trial Demanded

**PLAINTIFFS' MOTION FOR LEAVE  
TO FILE FIRST AMENDED COMPLAINT**

Plaintiffs Sydney Nicole LLC and Sydney Nicole Gifford (“Plaintiffs”) request leave of Court to file a First Amended Complaint and respectfully show the following.

### **INTRODUCTION**

1. Plaintiffs are Sydney Nicole LLC and Sydney Nicole Gifford. Defendants are Alyssa Sheil LLC and Alyssa Sheil (“Defendants”).
2. On April 22, 2024, Plaintiffs sued Defendants for eight causes of action, including copyright infringement (“Count One”), vicarious copyright infringement (“Count Two”), Digital Millennium Copyright Action violation (“Count Three”), trade dress infringement (“Count Four”), Misappropriation (“Count Five”), Tortious Interference with Business Relations (“Count Six”), Unfair Trade Practices & Unfair Competition (“Count Seven”), and Unjust Enrichment (“Count Eight”). Plaintiffs also pled a request for preliminary injunctive relief under 17 U.S.C. § 502.
3. On June 21, 2024, Defendants filed a Partial Motion to Dismiss Count Two, Count Three, Count Five, Count Six, Count Seven, and Count Eight of Plaintiffs’ Original Complaint. Plaintiffs filed a Response in Opposition to the Partial Motion to Dismiss on July 22, 2024. Defendants filed a Reply on July 29, 2024.
4. Defendants filed an Answer in this case on August 5, 2024.
5. On November 15, 2024, the Magistrate Judge issued a Report and Recommendations (the “Report”) on Defendants’ Partial Motion to Dismiss. In the Report, the Magistrate Judge recommended Defendants’ Partial Motion should be denied with respect to Counts Two, Three, and Five and granted with respect to Counts Six, Seven, and Eight.
6. Under the Scheduling Order in place for this case, the deadline for amended pleadings is **November 30, 2024.**

7. Plaintiffs seek leave to amend their complaint to correct factual misunderstandings in the current live pleading and clarify the issues. Plaintiffs further seek to comply with the Magistrate Judge's Report. Plaintiffs have notified Defendants of their intent to file the Amended Complaint and provided a courtesy copy of the proposed Amended Complaint.

### **ARGUMENT**

8. All factors weigh in favor of granting Plaintiffs leave to amend Plaintiffs' Original Petition. Federal Rule of Civil Procedure 15(a)(2) provides that a "court should freely give leave [to amend] when justice so requires." As such, "a district court must possess a 'substantial reason' to deny a request for leave to amend." *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5<sup>th</sup> Cir. 2004). Factors the Court may consider in denying leave for a party to amend a pleading include (1) undue delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by previous amendments, (4) undue prejudice to the opposing party, and (5) futility of the amendment. *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5<sup>th</sup> Cir. 2003).
9. The Court should allow the filing of Plaintiffs' amended pleading because it is appropriate and necessary. Plaintiffs seek leave to amend in order to correct factual misunderstandings in the current live pleading and clarify the issues in light of recent discovery findings.
10. First, there is no undue delay in Plaintiffs' amendment, as Plaintiffs are within the time frame under the Scheduling Order to amend pleadings and discovery only recently commenced in this case.
11. Second, there is no bad faith or dilatory motive. On the contrary, Plaintiffs seek to amend in part in order to clarify factual misunderstandings and clarify the issues, thereby benefitting all parties.

12. Third, there is no prior failure to cure deficiencies by previous amendments. As stated, Plaintiffs are within the permitted time frame to amend pleadings under the live Scheduling Order. Further, discovery only recently started in this case and Plaintiffs are acting expeditiously in light of recent discovery and in light of the approaching deadline to amend pleadings under the Scheduling Order.
13. Fourth, there is no undue prejudice to Defendants. Plaintiffs' First Amended Complaint has been proffered within the agreed deadline to amend pleadings and this case remains in the early stages of discovery. Plaintiffs have not introduced any new causes of action but have merely clarified the issues. Further, Plaintiffs have simplified the Complaint by removing the causes of action for tortious interference with contract, unjust enrichment, and unfair competition, in accordance with the Magistrate Judge's Report on Defendants' partial motion to dismiss.
14. Fifth the amendment is not futile, but necessary, as it aims to clarify the issues and factual misunderstandings. A copy of Plaintiffs' proposed First Amended Complaint is attached as **Exhibit 1**.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs ask the Court to grant leave to file their First Amended Complaint.

Dated: November 30, 2024

Respectfully Submitted,

*/s/ Kirsten Kumar*

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**SYDNEY NICOLE GIFFORD**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with Defendants' counsel regarding the foregoing Motion for Leave to File First Amended Complaint via email prior to submitting this filing.

*/s/ Kirsten Kumar*

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Kirsten Kumar

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Plaintiffs' Opposed Motion for Leave to File First Amended Complaint was filed electronically on November 30, 2024. As such, this document was served on all counsel of record pursuant to the Federal Rules of Civil Procedure.

*/s/ Kirsten Kumar*

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Kirsten Kumar